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Attorneys for Plaintiff EILEEN SCHLIM,  
on behalf of herself and all others similarly situated

**UNITED STATES DISTRICT COURT**

**CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION**

EILEEN SCHLIM, on behalf of  
herself and all others similarly  
situated,

Plaintiffs,

v.

CHICO'S FAS, INC., a Florida  
corporation; and DOES 1 to 100,  
inclusive,

Defendants.

) Case No.: CV11-03229 SJO (PJWx)  
) Honorable James S. Otero  
) Courtroom 1

**CLASS ACTION**

**STIPULATION REGARDING  
PRECERTIFICATION OPT-OUT  
NOTICE;**

**[PROPOSED] ORDER**

) Action filed: March 17, 2011  
) Action removed: April 15, 2011

1 WHEREAS, Plaintiff filed her complaint in Los Angeles Superior  
2 Court on or about March 17, 2011;

3 WHEREAS, Defendant removed the herein action to United States  
4 District Court on or about April 15, 2011;

5 WHEREAS, Plaintiff filed a Motion to Remand to State Court on or  
6 about May 16, 2011;

7 WHEREAS, on or about June 21, 2011, the court issued a Minute  
8 Order advising the parties that Plaintiff's motion to remand was being taken  
9 under submission;

10 WHEREAS, Plaintiff served Special Interrogatories, Set One seeking  
11 the identification of putative class members;

12 WHEREAS, Defendant served an objection to the disclosure of  
13 putative class member contact information on or about June 20, 2011;

14 WHEREAS, the parties have met and conferred and agreed that in  
15 order to preserve the privacy rights of the putative class members, a letter  
16 would be sent by a neutral third party allowing said putative class members  
17 to object to the release of their contact information;

18 WHEREAS, Plaintiff submitted the proposed stipulation and order on  
19 June 27, 2011. The court denied the stipulation because "the parties have  
20 provided insufficient information for the court to make an informed decision  
21 regarding the need and propriety of the proposed order and the impact of the  
22 order on Local Rule 23-3." *See* July 7, 2011 Order Re: Stipulation  
23 Regarding Precertification Notice;

24 WHEREAS, Plaintiff resubmits the stipulation with further  
25 clarification for why Plaintiff seeks this information. Plaintiff seeks the  
26 ability to communicate with putative class members about the allegations in  
27 this case, as Plaintiff and Plaintiff's counsel are fiduciaries to the class and  
28 seek substantive class-wide claims. Although Plaintiff believes that she has

1 the right to require the names, addresses, and telephone numbers be  
2 produced, Plaintiff has agreed to an “opt-out” notice procedure. Plaintiff  
3 advised the court of this procedure in its ex parte application concerning an  
4 extension of the Local Rule 23-3 continuance. The court granted Plaintiff’s  
5 application;

6 WHEREAS Plaintiff submits that this type of “opt out” notice  
7 procedure has been specifically adopted by several courts to protect putative  
8 class member privacy rights. *See e.g. Pioneer Electronics v. Superior Court*,  
9 40 Cal.4th 360 (2007) (permitting disclosure of contact information after use  
10 of opt out notice procedure). Plaintiff asserts that all counsel are permitted  
11 fair precertification communication pursuant to Gulf Oil Co. v. Bernard  
12 (1981) 452 U.S. 89 and its progeny, however without the order being entered  
13 Plaintiff will have no access to the putative class members that the defendant  
14 can contact. Plaintiff contends that, consistent with fundamental fairness, in  
15 the absence of abuse, neither party should be precluded from investigating  
16 and preparing its case for certification. Atari Inc. v. Superior Court (1985)  
17 166 Cal.App.3d 867 at 873. Plaintiff asserts that Atari approved free, open,  
18 and fair communication between any party to the litigation and the absent  
19 class members;

20 WHEREAS, Plaintiff contends that she needs to speak to similarly  
21 situated employees given Plaintiff’s allegation that she and others were  
22 forced to work off the clock and were forced to forgo requisite meal periods.  
23 In conjunction with objective evidence received to date, Plaintiff seeks the  
24 contact information that she contends is necessary to properly prepare  
25 Plaintiff’s motion for class certification. Plaintiff asserts that without said  
26 information and opportunity to talk to putative class members that the  
27 putative class members will be prejudiced;  
28

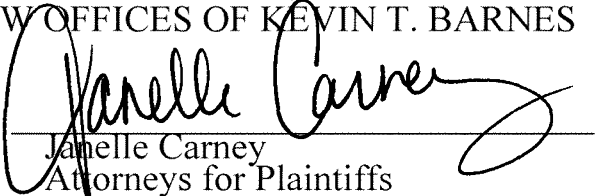
1 The parties by and through their attorneys of record, stipulate that  
2 Plaintiff, via neutral third party administrator Rust Consulting, Inc., may  
3 send a precertification notice to the putative class members herein, at  
4 Plaintiff's cost. The proposed notice is attached hereto as **Exhibit 1**.

5  
6 IT IS SO STIPULATED.

7  
8 DATED: July 20, 2011

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LAW OFFICES OF KEVIN T. BARNES

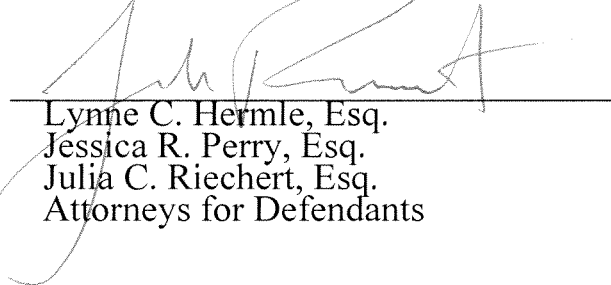
9  
10 By:

  
Janelle Carney  
Attorneys for Plaintiffs

11  
12  
13 DATED: July 19, 2011

ORRICK HERRINGTON SUTCLIFFE LLP

14  
15 By:

  
Lynne C. Hermle, Esq.  
Jessica R. Perry, Esq.  
Julia C. Riechert, Esq.  
Attorneys for Defendants

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## **Exhibit 1**

**Notice Regarding Your Privacy Rights In Connection With A Pending Proposed Class  
Action Lawsuit Against Chico's**  
(Schlim v. Chico's FAS, Inc.,  
Case No. 2:11-cv-03229-SJO (PJWx))

You are receiving this Notice of Privacy Rights because you are working for or have worked previously for Chico's FAS, Inc. ("Chico's") as an hourly paid and/or full time employee in California at any time between March 17, 2007 and the present. This Notice is being sent to you by Order of the United States District Court.

Plaintiff Eileen Schlim's attorneys are seeking your name, telephone number, and home address. The purpose of this Notice is to inform you about the lawsuit so that you can make a decision as to whether or not to consent to the disclosure of your name, telephone number, and home address to plaintiff's attorneys. Chico's maintains your name, telephone number and home address as confidential information.

This Notice of Privacy Rights is not an expression of any opinion by the Court as to the merits of any claim or defense asserted by either side in this litigation. The Court has not yet ruled as to whether this case may proceed as a class action, or whether any of the allegations or defenses of the parties have merit.

The plaintiff in the lawsuit claims that Chico's (1) failed to pay all wages; (2) failed to include bonus in the calculation of the regular rate for purposes of calculating overtime; (3) failed to provide meal periods; (4) failed to authorize and permit paid rest periods; (5) failed to pay vested vacation pay at termination; (6) failed to timely furnish accurate itemized wage statements; (7) failed to pay all wages due at termination; and (8) engaged in unfair business practices. The plaintiff seeks to represent classes of hourly paid and/or full time California Chico's employees.

Chico's denies all of plaintiff's allegations and claims in the lawsuit. Specifically, Chico's maintains (1) that it has paid and continues to properly pay its employees all compensation due; (2) that its meal and rest period policies and practices and wage statements comply with the law; (3) that it has paid all vested vacation pay and final wages due at termination; and (4) that it has not engaged in any unfair business practices.

The attorneys for Ms. Schlim and Chico's are as follows:

**Attorneys for Ms. Schlim**

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**If you do not want your name, telephone number, and home address released to plaintiff Eileen Schlim's attorneys, then you must sign the enclosed postage pre-paid postcard and return it to [ ] by [date].**

**Please do not contact the Court in response to this Notice.**